

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

RODERICK L. IRELAND

Chief Justice

1. Court Submitting Rules for Approval:

Appeals Court

2. Date Rules Submitted for Approval:

March 18, 2011

3. Date Approved and Promulgated by the Supreme Judicial Court:

April 20, 2011

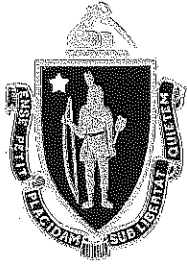
4. Rules or Rules, or Amendments Thereto, Approved and Promulgated:

Adoption of Standing Order Governing Motions to Stay Filed

Pursuant to Mass. R.A.P. 6

Effective date: June 1, 2011

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)



COMMONWEALTH OF MASSACHUSETTS
THE APPEALS COURT
BOSTON, MASSACHUSETTS 02108

PHILLIP RAPOZA
CHIEF JUSTICE

March 18, 2011

Honorable Francis X. Spina
Chair, SJC Rules Committee
Supreme Judicial Court
John Adams Courthouse
Boston, MA 02108

Re: Amendments to Appeals Court's Standing Order Governing Petitions to the Single Justice Pursuant to G. L. c. 231, § 118 (first paragraph) and Adoption of Standing Order Governing Motions to Stay Filed Pursuant to Mass. R.A.P. 6.

Dear Justice Spina:

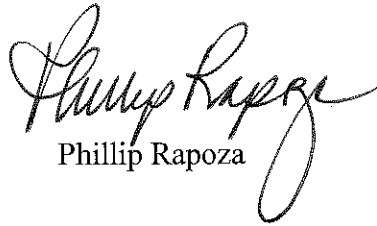
The Justices of the Appeals Court have proposed amending our Standing Order Governing Petitions to the Single Justice Pursuant to G. L. c. 231, § 118 (first paragraph). Also, the Justices have proposed a Standing Order Governing Motions to Stay Filed Pursuant to Mass. R.A.P. 6. Copies of both standing orders are attached for your review.

These standing orders will require petitioners to file certain documents that are essential to the single justice's screening of both petitions for interlocutory review and motions to stay judgments or the execution of sentences.

Initially, the Appeals Court sought public comment on a single proposed standing order that addressed these matters. After further consideration, we decided to separate the proposed order into the two attached here (one governing interlocutory petitions and the other governing motions for stay). In all, we received one comment, which pertained to the time limit for the Commonwealth to file a response to a motion to stay execution of sentence as it related to the time limit provided in Mass.R.A.P. 6(b)(2). Consequently, we have revised the proposed Rule 6 standing order to clarify that (1) its time limit for a response applies to motions to stay execution of sentence filed in the single justice session of the Appeals Court prior to the entry of a direct or collateral appeal, and (2) otherwise, the time limit stated in Mass.R.A.P. 6(b)(2) applies. Last, we made some administrative additions, including instructions on the filing of impounded or confidential material and a requirement that the petition or motion not exceed five pages, exclusive of the fifteen page memorandum of law.

I respectfully request that the Supreme Judicial Court approve the adoption of these standing orders. The Appeals Court would like each standing order to become effective on May 1, 2011.

Yours sincerely,

A handwritten signature in cursive script, reading "Phillip Rapoza". The signature is fluid and stylized, with the first and last names being more prominent.

Phillip Rapoza

PR/md

Enclosures

cc: Joseph Stanton, Clerk

MASSACHUSETTS APPEALS COURT

STANDING ORDER CONCERNING MOTIONS TO STAY A JUDGMENT OR EXECUTION OF SENTENCE PURSUANT TO MASS.R.A.P. 6.

(a) Contents of a Motion for a Stay; Form. A motion for a stay pursuant to Mass.R.A.P. 6 shall include in the following order: (1) a request for a stay, which shall state briefly the nature of the judgment or sentence entered by the trial court for which a stay is sought, the entry date of such judgment or conviction, and the name of the judge who entered it; (2) the text of the order and rationale of the trial court denying the motion for stay or, if no such motion was filed in the trial court, a showing why filing the motion in the trial court was not practicable; (3) a statement of the issues of law raised by the motion; (4) a statement of the specific relief requested; and (5) an addendum containing copies of the judgment, notice of appeal, and the trial court's order denying the prior motion for a stay. References to the parties in the motion shall be by the designation of the party in the trial court. The motion shall not exceed five pages of text compliant with Mass.R.A.P. 20[a][1]-[3] without leave of the court.

(b) Supporting Memorandum of Law and Record Appendix. The motion shall, unless otherwise ordered, be accompanied by a memorandum of law (not to exceed fifteen pages of text compliant with Mass.R.A.P. 20[a][1]-[3] unless leave of the court has been obtained) in support of the movant's position, with citations to appropriate authorities and a statement addressing why a stay is appropriate. The argument shall make reference to those portions of the record which are directly relevant to the issues raised by the motion. Relevant portions of the record shall be filed as a record appendix, and include a current copy of the trial court docket entries and all relevant papers filed in the trial court, including those filed by the other party or parties. The record appendix shall commence with a table of contents that lists each document contained therein.

(c) Opposition, Form. The non-moving party or parties to the case may, but need not, file and serve an opposition thereto (not to exceed fifteen pages of text compliant with Mass.R.A.P. 20[a][1]-[3] unless leave of court has been obtained) setting forth reasons why the motion should not be granted. The opposition shall not restate matters contained in the motion unless the opposing party is dissatisfied with the statement thereof contained in the

motion. The opposition may be accompanied by a supplemental record appendix containing such additional portions of the record as were before the trial court and are necessary for adjudication, and which the movant failed to include in its record appendix.

(d) Opposition, Timing.

(1) For motions filed in all civil matters and for criminal matters entered in the Appeals Court's single justice session (i.e., prior to the entry of an appeal pursuant to Mass.R.A.P. 10[a][1] or [2]), the other party or parties to the case may, but need not, file and serve an opposition thereto within seven days after the service of the motion (ten days if the movant's certificate of service required under [e] hereof shows service by first-class mail), or such other time as the court may direct.

(2) For motions filed in criminal appeals subsequent to the entry of and during the pendency of a direct or collateral appeal in the Appeals Court, the time limit for a response is governed by the provisions of Mass.R.A.P. 6(b)(2).

(3) For motions filed in civil appeals entered pursuant to Mass.R.A.P. 10[a][1], the other party or parties to the case may, but need not, file and serve an opposition thereto within seven days after the service of the motion (ten days if the movant's certificate of service required under [e] hereof shows service by first-class mail), or such other time as the court may direct.

(e) Filing; Service. The motion, memorandum, record appendix, and any subsequently filed opposition and supplemental record appendix, shall be filed in the office of the Clerk of the Appeals Court with a certificate of service on all other parties in the case, including the service and filing of a copy in the appropriate trial court clerk's office from which the matter arose. No additional paper copies of the motion or opposition are required to be filed in the Appeals Court. The certificate of service shall set forth the name, address, and telephone number of counsel or other persons upon whom service has been made, and specify the date and manner of service. The certificate of service shall identify the name of each party

represented by counsel and specify the counsel who represents each party.

Service may be personal or by first class mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by first class mail is complete on mailing.

(f) Impounded or confidential information. In any case in which the trial court entered an order impounding, sealing, or excluding from public access all or any portion of the trial court records, or there is material or information in a party's motion, addendum, memorandum, or any appendix that is automatically impounded or deemed confidential by statute or court rule, the parties shall comply with Mass.R.A.P. 16(d), 16(m), and 18(g). See G. L. c. 265, § 24C. If the trial court record includes any items listed as "personal identifying data" in the Supreme Judicial Court's Interim Guidelines on Personal Identifying Data, the parties shall comply with the guidelines in all filings to the Appeals Court.

(g) Electronic Copy. When a party represented by counsel files a motion or opposition thereto, including any supporting memorandum of law, the filer shall, in addition to the paper copy, simultaneously provide the court with a searchable PDF (portable document format) copy of the motion or opposition, and supporting memoranda of law, either (i) on a CD-ROM, or (ii) by an email, to which the PDF copy is attached, sent to: emotions@appct.state.ma.us. A PDF copy of the record appendix may be filed if feasible to produce it.

The CD-ROM and email filing requirements are waived for self-represented litigants.

(h) Hearing. The single justice has discretion to determine whether a hearing shall be held.